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NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

BENJAMIN LEVINE, M.D.

ORDER REVOKING LICENSURE

This matter was initially considered by the New Jersey State Board of Medical Examiners (the "Board") on April 14, 2010, when we entered an Order granting the Attorney General's motion for Summary Decision. That action was based on findings that respondent Benjamin Levine, M.D. had been convicted of the crimes of Theft by Deception and Falsifying Records, and our determination that no genuine issues of material fact existed. See Order Entering Summary Decision In the Matter of Benjamin Levine, M.D., filed April 15, 2010. A copy of said Order is appended hereto as Exhibit "A," and incorporated in its entirety by reference herein.

At respondent's request, we delayed finalization of this matter until after April 26, 2010 (the date on which respondent was sentenced in the criminal case), instead ordering that the matter be returned to the Board for a hearing on June 9, 2010, for the limited purposes of consideration of mitigation evidence and determination of penalty. We have now considered and reviewed the record in this matter, to include not only all documents before us on April 14, 2010, but also the transcript of Dr. Levine's criminal

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trial, the transcript of his sentencing hearing, Orders detailing the terms of sentence that were meted by the Honorable Lorraine Pullen, J.S.C., and letters and documents submitted by the parties subsequent to April 14, 2010.

We unanimously conclude that cause exists to presently order the revocation of respondent's medical license and to assess costs incurred in the investigation and prosecution of this matter. Simply put, respondent stands convicted of having engaged in multiple acts of fraudulent and dishonest conduct. Respondent's convictions are but the most recent chapter added to an extensive litany of misconduct. The acts on which the convictions were based - particularly Dr. Levine's fraudulent submission of over two thousand five hundred claims for reimbursement for services which he was not entitled to, and his submission of a falsified application to secure registration from the Drug Enforcement Agency - form a compelling predicate to support the revocation of his license. Respondent has submitted nothing in mitigation which persuades us that cause exists to order a lesser penalty. We set forth below in detail: 1) a summary of the proceeding before the Board on June 9, 2010; and 2) the basis for our determination to revoke Dr. Levine's license.

1) Hearing before Board on June 9, 2010: As noted above, this matter was returned to the Board on June 9, 2010, for a hearing to consider any mitigation evidence presented by respondent

and to determine penalty to be assessed. Deputy Attorney General Doreen Hafner appeared for Attorney General Paula Dow on June 9, 2010. Respondent, who is presently incarcerated following his criminal sentencing, did not appear at the hearing.

Initially, we found that Dr. Levine had adequate notice that this matter was scheduled for hearing on June 9, 2010. Dr. Levine was served with a copy of the Board's Order entering Summary Decision, which Order specifically provided that the Board would conduct a hearing and then finalize this matter on June 9, 2010.¹ He was thereafter notified of the date and time of this hearing in multiple additional letters (sent to his current prison address as well as his address of record).²

Upon concluding that adequate notice of this matter was provided to Dr. Levine, we proceeded to hold the scheduled hearing. The Attorney General supplemented the record in this matter with a

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It is apparent from review of the sentencing transcript of April 26, 2010, that Dr. Levine had received a copy of the Board's April 15, 2010 Order and that he was thus aware that the Board had deferred making any determination of penalty until after his sentencing hearing. See P-3 at p. 35, l. 18 - p. 36, l. 1:

I tried to attend the Medical Board hearing at its April 14th, 2010, penalty hearing where they were going to impose penalties against me, however, the Medical Board decided to postpone its penalties and wait for the Court's decision today as to what will happen.

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The Board's records further reflect that a representative from the Board's Administrative Office contacted Dr. Levine's social worker at the prison and left a message with the social worker providing details concerning the scheduled hearing.

copy of the transcript of the sentencing hearing held on April 26, 2010 and three Orders detailing the terms and conditions of Dr. Levine's criminal sentence entered by the Honorable Lorraine Pullen. The Attorney General also offered a certification itemizing costs incurred in the investigation and prosecution of this case before the Board.³ In addition, we received a complete copy of the transcript of Dr. Levine's criminal trial, which was conducted on ten dates between October 14, 2009 and November 6, 2009 (we consider the trial transcript to be part of the record in this matter).

D.A.G. Hafner urged the Board to revoke respondent's license, pointing out that respondent stands convicted of crimes involving moral turpitude, that respondent has a lengthy

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Additional documents introduced into evidence by D.A.G. Hafner on June 9, 2010 were:

- P-3 Transcript of sentencing 4/26/10.
- P-4 Order of Forfeiture of License to Practice Medicine, in State v. Levine, entered April 26, 2010 by the Honorable Lorraine Pullen, J.S.C.
- P-5 Order/Judgment for Restitution, in State v. Levine, entered April 26, 2010 by the Honorable Lorraine Pullen, J.S.C. 4/26/10.
- P-6 Judgment of Conviction and Order for Commitment in State v. Levine, entered April 26, 2010 by the Honorable Lorraine Pullen, J.S.C.
- P-7 Certification of Deputy Attorney General Doreen Hafner (detailing attorneys fees and investigative costs) dated June 7, 2010.

disciplinary history with the Board and that respondent has expressed no remorse for any of his misconduct. While Dr. Levine was not present, we considered all correspondence which he submitted to the Board (both before and after April 14, 2010) as his mitigation submission.⁴

2) Supplemental Findings of Fact and Determinations Upon Penalty

The fundamental findings of fact in this case - namely, that respondent was convicted of the crimes of Theft by Deception (a Second Degree offense) and of Falsifying Records (a Fourth Degree offense) - are findings that we previously made on April 14, 2010, when entering Summary Decision. At this time, we supplement those findings with details regarding respondent's sentencing,

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Correspondence received from Dr. Levine prior to the hearing date is detailed in our prior Order. As noted therein, Dr. Levine previously submitted a letter dated April 6, 2010, to which he appended an eleven page statement which he self-described as constituting the "entire argument and mitigating factors."

In addition to the letters specified in our prior Order, we considered a letter that Dr. Levine forwarded to Executive Director Roeder dated May 12, 2010. While Dr. Levine does not suggest that the letter is to constitute his mitigation submission, he appended a copy of a certification he prepared in support of a Motion for Reconsideration and Reduction of Sentence in his criminal matter, which certification in turn includes information regarding Dr. Levine's health issues.

Finally, although the transcript of the sentencing hearing (P-3 in evidence) was not a document submitted directly by Dr. Levine, mitigation testimony was offered on Dr. Levine's behalf during that hearing, to include testimony of family members (three of Dr. Levine's children and his wife) and of friends and patients. As the transcript is part of this record, we have also had opportunity to consider that testimony in conjunction with the mitigation submissions made by Dr. Levine.

which occurred on April 26, 2010.

Respondent was sentenced to serve eight years in prison, based primarily on his criminal conviction of the Second Degree crime of Theft by Deception. See Judgment of Conviction and Order for Commitment, P-6. Additional terms of imprisonment were meted out for the other crimes that respondent was convicted of, but all other sentences were for periods of three years or less and all were to run concurrent with the eight year sentence for Theft by Deception. Id.⁵ Respondent was additionally ordered to make restitution in amounts totaling \$176,078.10 to six named entities - to include a requirement that he make restitution of greater than \$159,000 to Highmark Medicare Services. P-5.⁶ Finally, Judge Pullen independently ordered that Dr. Levine's medical license was to be revoked for a period of three years. P-4.⁷

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The specific custodial terms of sentencing were three years for Count 1 (Unauthorized Practice of Medicine), eight years for Count 2, to run concurrent with Count 1 (Theft by Deception), 18 months for Count 6, to run concurrent with Counts 1 and 2 (False/Tamper Record - Knowing), 3 years for Count 7, to run concurrent with Counts 1, 2 and 6 (Insurance Fraud) and Count 8 was merged with Count 7 for purposes of sentencing (False-Tamper Record-Knowing). See Judgment of Conviction, P-6.

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Respondent was ordered to make restitution totaling \$159,781.69 to Highmark Medicare Services, \$10,643.02 to United Health Care, \$915.50 to Aetna Insurance, \$9,981.89 to Horizon Blue Cross/Blue Shield of New Jersey, \$4,835.42 to Connecticut General Life Insurance Company, and \$563.60 to Mutual of Omaha. See Order/Judgment for Restitution, P-5.

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Judge Pullen's order revoking Dr. Levine's license was entered pursuant to N.J.S.A. 2C:51-5. That statute authorizes the Superior Court to revoke or suspend the professional license of an individual convicted

We asked for the opportunity to review and consider the transcript from the criminal proceeding in order to assure ourselves that any action we presently take is in fact based on misconduct beyond that which was the basis for a prior action taken against respondent,⁸ memorialized in a Final Order entered in March 2007. See Final Order Denying Reinstatement and Continuing Suspension of License, In the Matter of Benjamin Levine, M.D., filed on March 14, 2007. Having reviewed the trial record, we are fully satisfied that the present action is based and grounded on conduct that was neither before, nor considered by, the Board in 2007. Rather, our prior action was specifically based on respondent's having engaged in the unlicensed practice of medicine after July 1, 2003, on his having practiced medicine without holding malpractice insurance after December 2002, and on his having made false claims on an application for malpractice insurance he submitted through the Britton Agency on or about July

of health care claims fraud. Significantly, the statute does not divest the Board from taking action against respondent. See N.J.S.A. 2C:51-5(f) ("Nothing in this section shall be construed to prevent or limit the appropriate licensing agency or any other party from taking any other action permitted by law against the practitioner.").

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As noted in footnote 1 in our April 15, 2010 Order, the Attorney General stated in the filed complaint that the Board previously relied on the conduct underlying three of the five counts on which respondent was convicted (namely, the convictions for Unauthorized Practice of Medicine, in the Third Degree, in violation of N.J.S.A. 2C:21-20; Insurance Fraud, in the Third Degree, in violation of N.J.S.A. 2C:21-4.6 and one of the two Falsifying Records charges, in the Fourth Degree, in violation of N.J.S.A. 2C:20-4) to support the actions finalized within our March 14, 2007 Order.

24, 2006. The action was not based on Dr. Levine's having engaged in fraud by knowingly having made false representations to the federal Medicare program and other third party payers, nor was it based on his having knowingly submitted false statements on an application made to the Drug Enforcement Agency in order to retain his authorization to prescribe drugs under the Controlled Substance Act.⁹

We conclude that respondent's convictions of Theft by Deception and Falsifying Records (and the misconduct established thereby) provide a compelling predicate to support the entry of an Order revoking Dr. Levine's medical license. The magnitude of Dr. Levine's fraudulent conduct is striking - the uncontroverted evidence in the criminal action was that Dr. Levine submitted 2,520 false claims to Medicare over a period that spanned almost two and one-half years. Trial Transcript, State v. Levine, October 30, 2009, p. 58, l. 23 - p. 60, l. 16 (testimony of Nancy Ellen Casey,

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In reaching the above determination, we are aware that both of the two Counts on which the Attorney General is presently moving are, to some degree, intertwined with Dr. Levine's unlicensed practice of medicine (which was considered by the Board in 2007), as the misrepresentations that Dr. Levine made were claims that he held a valid New Jersey medical license. In both instances, however, the criminal charges against Dr. Levine could not have been sustained simply by demonstrating that Dr. Levine practiced without holding a license - rather, the charges required proof that Levine knew he did not hold a license, and proof that he then knowingly made false statements in order to secure payments that he would not otherwise have been entitled to (or, in the case of the DEA, to secure a registration that would not have otherwise been granted). The misconduct which the Board is now being asked to consider thus is clearly misconduct that goes far beyond that for which Dr. Levine was penalized in our Final Order filed on March 14, 2007.

Special Agent with the U.S. Department of Health and Human Services, Office of Inspector General). Dr. Levine's conviction, in turn, necessarily demonstrates not only that Dr. Levine obtained monies that he was not entitled to, but also that he acted with a conscious object to deceive, and that he knew that the statements and/or representations that he was making were false. See Trial Transcript, State v. Levine, November 6, 2009, p. 35, l. 14 - p. 39, l. 6 (Judge Pullen's charge to the jury on the elements of Theft by Deception).

It is thus the case that Dr. Levine's convictions of Theft by Deception and Falsifying Records¹⁰ conclusively demonstrate that Dr. Levine engaged in deliberate and conscious fraud to obtain payments and/or a registration that he would not otherwise have been entitled to receive. Those acts, in turn, support conclusions that Dr. Levine is both fundamentally corrupt and pervasively dishonest. Both qualities are antithetical to continued licensure.

While we have, on this record alone (i.e., focusing solely on the conduct which underlies respondent's criminal convictions for Theft by Deception and Falsifying Records), found sufficient basis to order the revocation of respondent's license,

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In order to have found Dr. Levine guilty of falsifying records, the jury needed to conclude, beyond a reasonable doubt, that Dr. Levine submitted his renewal application to the Drug Enforcement Administration knowing the application contained a false statement or information, and with a purpose to deceive. See Trial Transcript, State v. Levine, November 6, 2009, p. 47, l. 4 - p. 51. l. 8 (Judge Pullen's jury charge on Falsifying Records).

we point out that our determination is further buttressed by respondent's long history of repeated misconduct warranting imposition of disciplinary sanction. Dr. Levine's license to practice was initially suspended from August 17, 1990 through August 27, 1992, based on a disciplinary complaint which alleged that he had engaged in sexual misconduct with multiple patients. Respondent's license was then again suspended commencing in July, 2003, and has remained suspended continuously since July 2003.

We have considered Dr. Levine's mitigation submissions, but do not find anything that has been offered in mitigation to be persuasive. Indeed, we find it striking that Dr. Levine not only fails to express any remorse for his conduct, but also continues to eschew any responsibility for his actions. His letters to the Board thus continue to include recycled arguments, similar to those he has made to this Board in other disciplinary proceedings - as to why his conduct should be excused, and why others are to blame. His failure to acknowledge even the possibility that he is responsible for his own actions suggests that it is unlikely that Dr. Levine will learn from his mistakes, and provides yet additional support for our decision to presently order the revocation of his license.¹¹

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Revocation of a license is the singular most significant disciplinary penalty that the Board possesses. Recognizing, however, that the administrative practice of the Board has been to allow even revoked licensees to apply for reinstatement of license, we herein specify the demonstrations that Dr. Levine would need to make before we

Finally, we have concluded that Dr. Levine should be assessed the costs of this matter. We have reviewed DAG Hafner's certification of costs, dated June 7, 2010, which details the basis for attorneys fees totaling \$8,015.00 and investigative costs of \$483.41. We find that the attorneys fees and investigative costs claimed are reasonable and clearly justified by the important interests implicated in this matter, and we thus order that respondent be assessed an aggregate total of \$8,498.41 in costs.¹²

WHEREFORE, it is on this 11th day of August, 2010

ORDERED:

1. The license of respondent Benjamin Levine, M.D., to practice medicine and surgery in the State of New Jersey is hereby revoked.

would consider reinstating his license in the future. Specifically, in the event any re-application is made (we note that, in light of Judge Pullen's Order, Dr. Levine could not seek reinstatement for a minimum period of three years from April 26, 2010), Dr. Levine will need to appear before a Committee of the Board and then demonstrate that he is fit and qualified to resume the practice of medicine. As he would not, as of that time, have lawfully practiced medicine for a period of over ten years (and presumably not have engaged in any practice of medicine, with or without a license, for a period of greater than seven years), he would then need to demonstrate proficiency to resume practice. We will require that, at a minimum, any such demonstration would need to include a comprehensive assessment of his skills to practice, to be conducted by an entity recognized by the Board to be capable of performing such an assessment. Dr. Levine would also need to then demonstrate that he has fully satisfied all terms and conditions of his criminal sentence, to include making the restitution that was ordered.

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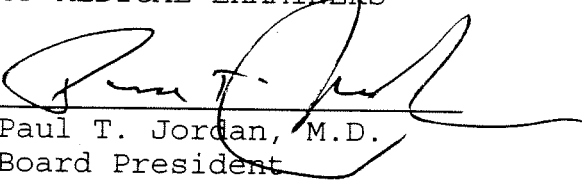
We decline to presently order the assessment of any additional monetary penalties, given the magnitude of the financial obligations that were imposed on respondent in the criminal proceeding by way of restitution.

2. The Board shall not entertain any application for reinstatement of license from Dr. Levine for a period of three years from April 26, 2010, consistent with the Order of license revocation entered in the criminal case by the Honorable Lorraine Pullen. Additionally, the Board will not entertain any petition for reinstatement from Dr. Levine unless Dr. Levine shall, at such time as he may petition for relicensure, first secure and present an assessment of his practice skills, prepared by a practice assessment entity acceptable to the Board. The Board presently recognizes the Colorado Personalized Education Program for Physicians ("CPEP") and the University of California-San Diego Pace Program ("UC-SD PACE") as acceptable assessment entities. Dr. Levine may thus obtain a skills assessment from CPEP or UC-SD PACE, or from any other entity that Dr. Levine may propose to conduct an assessment, provided that the entity is deemed by the Board to be capable of conducting an assessment of comparable scope and rigor. Dr. Levine must also then demonstrate that he has satisfied all conditions of his criminal sentence, to include having made restitution in full consistent with the Order entered by Judge Pullen. Finally, Dr. Levine would then have to appear before a Committee of the Board and demonstrate, to the satisfaction of the Board, that he is fit and qualified to reenter the practice of medicine, and demonstrate that good cause exists to then support the reinstatement of his license.

3. Dr. Levine is hereby assessed investigative costs and attorneys' fees that were incurred in this matter in the amount of \$8498.41.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By:


Paul T. Jordan, M.D.
Board President